

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

FAIRMONT GENERAL HOSPITAL, INC.

Employer

and

Case 6-UC-472

RETAIL, WHOLESALE AND DEPARTMENT
STORE UNION COUNCIL, LOCAL 550,
UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION

Union-Petitioner

**REGIONAL DIRECTOR'S DECISION, ORDER
AND CLARIFICATION OF BARGAINING UNIT**

The Employer, Fairmont General Hospital, Inc. operates an acute care community hospital in Fairmont, West Virginia, where it employs about 180 nonprofessional employees represented by Retail, Wholesale and Department Store Union Council, Local 550, United Food and Commercial Workers International Union, the Union-Petitioner (Petitioner). In this proceeding, the Petitioner filed a petition with the National Labor Relations Board under Section 9(b) of the National Labor Relations Act seeking to clarify the existing nonprofessional bargaining unit to include two assistants who work in the occupational medicine program.¹ A hearing officer of the Board held a hearing and the parties filed timely briefs with me.

As evidenced at the hearing and in the briefs, the parties disagree on the following two issues: first, whether a unit clarification petition is appropriate in the circumstances of this case, and second, whether the existing nonprofessional unit should be clarified to include the occupational medicine assistants.

¹ The positions at issue are occupational medicine assistant I and occupational medicine assistant II.

The Employer first contends that the petition must be dismissed because the work performed by the occupational medicine assistants has been performed by non-unit employees for many years, even while the parties have negotiated successive contracts. The Employer next contends that the occupational medicine assistants do not share a community of interest with the existing nonprofessional unit and therefore should not be added to that unit.

The Petitioner, contrary to the Employer, contends that its petition is appropriate because the occupational medicine assistant positions are newly created positions. The Petitioner further contends that the occupational medicine assistants perform the same functions as the occupational medicine lab secretary who was in the unit, and the same functions as other employees in the existing nonprofessional unit, and therefore should be accreted to that unit.

I have considered the evidence and the arguments presented by the parties on each of the two issues. As discussed below, I have concluded that the occupational medicine assistants hold a newly created position, and that the existing nonprofessional unit should be clarified to include the occupational medicine assistants. Accordingly, I have issued an Order clarifying the unit.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports each of my conclusions on the issues.

I. OVERVIEW OF OPERATIONS

The Employer, a West Virginia corporation, operates an acute care community hospital in Fairmont, West Virginia. The hospital has 252 beds and offers a variety of health care

services to the local area. In addition to the main hospital in Fairmont, the Employer also operates five off-site facilities.²

The Employer employs a total of about 700 employees. The RNs, LPNs and certain technical employees are represented by District 1199, West Virginia/Kentucky/Ohio, Service Employees International Union (District 1199) while the nonprofessional employees are represented by the Petitioner. As noted, there are about 180 nonprofessional employees in the Petitioner's bargaining unit.

II. BARGAINING HISTORY

The parties have stipulated that in about 1965, the Petitioner was certified as the collective-bargaining representative of a unit of nonprofessional employees.³ This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms from May 28, 2004 through June 30, 2006.⁴ The current collective-bargaining agreement describes the unit as follows:

All the part-time and full-time nonprofessional employees in the following Hospital departments: Nutrition Services, Engineering, Laundry, Guest Services, X-Ray, Clinical Laboratory, Medical Records, Central Supply, and Patient Services. There is excepted from the above departments all clerical and administrative employees, other than ward secretaries, and all clerical employees (except in the Medical Records department); all department heads and their assistants; student employees; and supervisors.

The term, "nonprofessional employees," is intended to exclude those whose occupations require a course of study or an extensive technical training course or apprenticeship, such as laboratory technicians, registered or licensed practical nurses, or dietitians. [sic]

² Except as discussed herein, the Petitioner does not represent any employees at the off-site locations.

³ The Regional Office records do not reflect such a certification by this Region. It is noted that the Health Care Amendments, Public Law 93-360, 93 Cong., 2d Sess., S.3203, granting the Board jurisdiction over health care institutions, such as the Employer herein, were not enacted until 1974.

⁴ Negotiations for the current contract began in 2003 and extended into 2004.

III. OCCUPATIONAL MEDICINE PROGRAM

The Employer has an occupational medicine program, which offers such services as independent medical exams, injury management, physical agility testing, drug testing, audio tests, vision screening, pulmonary function testing and electrocardiograms. The occupational medicine program is under the direction of Pamela Payne, who reports to the Assistant Vice President of Business and Operations Development, Kimberly Cheuvront. Reporting directly to Payne are the occupational medicine coordinator, an occupational medicine assistant I and an occupational medicine assistant II.⁵ The occupational medicine program is one of the hospital's out-patient programs; other out-patient programs include physical therapy, pulmonary rehab and cardiac rehab. The occupational medicine program is located in an off-site building which is about five miles from the hospital.⁶

A. History of Occupational Medicine Program

The occupational medicine program has evolved over the years from its inception in about 1991. In about 1991, the hospital began offering services that have come to be known as occupational medicine. These services were performed in the hospital's clinical lab by lab technologists, who were represented by District 1199.

In about 1998, the hospital assigned an LPN to perform the occupational medicine clinical functions, instead of the lab technologists. The LPN, like the lab technologists, was represented by District 1199. Around that time, a lab secretary, who was part of the Petitioner's bargaining unit, was assigned to handle the clerical functions related to occupational medicine.

⁵ The occupational medicine department also has an occupational medicine physician.

⁶ Also in this building is the outpatient physical medicine department.

In addition to performing these clerical functions in the hospital, at times, the lab secretary assisted when drug testing was performed at an employer's facility.⁷

Subsequently, in about 1999, the hospital retained Brian Pulice to direct the occupational medicine program.⁸ Pulice was employed by a management services company, which was a subsidiary of the hospital. His primary responsibilities were sales and marketing, and he spent most of his time on the road.

Several years later,⁹ the occupational medicine program had outgrown the available space in the hospital lab, and moved off-site to a space adjacent to the physical medicine office. At that time, both the LPN (Cindy Ralphsnyder) and lab secretary (Janice Diven) who had been assigned to the program relocated to the new space. After relocating, the LPN left the occupational medicine program to accept another position with the hospital.

The hospital did not replace the LPN in the occupational medicine program, but instead created a new position of occupational medicine services coordinator responsible for performing clinical functions. The job description for this position states that the position is "responsible for all patient flow support activity" in the program

In August 2002, lab secretary Diven was awarded the newly created position.¹⁰ The Employer considered the newly created position to be a non-bargaining unit position. According to the Employer, both the Petitioner and District 1199 were notified of the creation of the position

⁷ On those occasions, the lab secretary would handle paperwork to establish the chain of custody, take the temperature of urine specimens, and seal the specimens in bags.

⁸ Pulice's title was Occupational Medicine Coordinator.

⁹ While Chevront testified that the relocation occurred in 2000, a memo from Pulice announcing the relocation establishes that it occurred in April 2002.

¹⁰ Although the newly created position had a title similar to Pulice's title, the functions were quite different. While Pulice focused on sales and marketing, Diven was performing clinical functions in the program.

of occupational medicine services coordinator, and neither union asserted that the position was within its bargaining unit.

About the same time that the hospital created the new occupational medicine services coordinator position and awarded it to Diven, the hospital awarded the lab secretary position formerly held by Diven to Brenda Schell, who had formerly been a lab secretary in the hospital lab. While the occupational medicine services coordinator position was considered non-bargaining unit, the lab secretary position occupied by Schell continued to be part of the Petitioner's bargaining unit covered by the contract. As a lab secretary in the occupational medicine program, Schell performed some minor clinical functions, which are described in more detail below.

In about October 2004, the hospital replaced Pulice with an in-house program director, Pamela Payne. At that point, certain clerical functions associated with setting up new client accounts that had been performed by Schell were taken over by Payne.¹¹

In about June 2005, Payne approached hospital management to discuss the growth in demand for clinical services in the occupational medicine program, along with a decreased need for clerical services. Payne initially proposed hiring another occupational medicine services coordinator, but Payne also wanted Diven to be able to assume some oversight responsibilities. It was decided to create three new clinical positions to staff the program: an occupational medicine coordinator,¹² an occupational medicine assistant I (a part-time position) and an

¹¹ Although the Employer in its post-hearing brief states that Payne assumed responsibility for establishing and billing client accounts and describes this as a "clerical task that previously had occupied approximately 95% [of] the lab secretary's time," the record does not support that statement. To the contrary, while there were various estimates of the amount of time spent on different duties, there was no testimony that the billing functions required 95 percent of the lab secretary's time. The closest testimony, at pages 123-124 of the hearing transcript, was in response to a question posed by the hearing officer. The hearing officer asked: "So, are you saying, then, that these billing duties occupied 95 percent of her time?" The witness answered "Yes, . . . in addition to preparing the rooms, and such, for the physician." The hearing officer said, "Okay," and the witness continued, "Assisting him."

¹² In contrast to the "occupational medicine services coordinator" position.

occupational medicine assistant II (a full-time position). All three positions were considered by the Employer to be non-bargaining unit positions. At the same time, it was decided to eliminate the lab secretary position.¹³

Diven was awarded the occupational medicine coordinator position, and Schell was awarded the full-time assistant position. The part-time assistant position was filled by Roseanne Orwig.

While the titles of Diven's positions were similar, the job descriptions are quite different. That is, in August 2002, Diven had become the occupational medicine services coordinator, but in July 2005, Diven's title became occupational medicine coordinator. Notwithstanding the similarities of titles, the job description for Diven's July 2005 position had as "preferred" qualifications the certifications to perform numerous tests. In addition, reflecting Payne's desire that Diven be given some oversight responsibilities, the job description for the occupational medicine coordinator position provides: "In absence of Director coordinates day-to-day operations. Maintains contact with Director when applicable."¹⁴

¹³ The lab secretary position was eliminated effective July 15, 2005.

¹⁴ As noted, the Petitioner did not seek the inclusion of the newly created occupational medicine coordinator in the unit.

In prior discussions with the Petitioner, the Employer had apparently taken the position that the occupational medicine coordinator position is managerial or supervisory. Based on these comments, the Petitioner did not seek in its petition to include the new coordinator position in the existing nonprofessional unit. During the hearing, the Assistant Vice President of Business and Operations Development testified that the new coordinator position was not management or supervisory; further, the Employer's Vice President of Human Resources and Legal Services described the coordinator position as performing "quasi-supervisory duties."

Although at one point in the record, the Petitioner mentioned the possibility of amending its petition to include the coordinator position, no such amendment was offered. Accordingly, the issue of whether the coordinator position is managerial or supervisory was not fully developed at the hearing.

B. Positions of the Parties

In this proceeding, the Petitioner argues that the duties of the occupational medicine assistants are substantially similar to the duties performed by the lab secretary in the occupational medicine program, a position which was included in the bargaining unit, before that position was eliminated in July 2005, and also substantially similar to the duties of other nonprofessional employees in the bargaining unit.

The Employer, on the other hand, argues that the duties of the occupational medicine assistants are more technical than those of the nonprofessional employees represented by the Petitioner, and in support of this position, cites the certifications necessary to perform various testing functions. The Employer further argues that the duties of the occupational medicine assistants are substantially similar to the duties performed first by the LPN and second by Diven as occupational medicine services coordinator, and that the Petitioner has long accepted the placement of Diven's position outside the bargaining unit.

C. Duties and Qualifications of Occupational Medicine Assistants

In general, the occupational medicine assistants receive incoming telephone calls, schedule appointments, collect specimens, perform finger sticks, document patient information and vital signs, prepare records for physicians, prepare examining rooms, assist physicians with physicals, clean instruments, and count and order supplies. They also perform the following tests: hearing tests, breath alcohol tests, hair tests, urine collection for drug screening, pulmonary function and bone density.

Schell estimates that she currently spends 25 percent of her time performing clerical functions. Diven estimates that each employee in the occupational medicine program spends 5 percent of her time performing clerical functions.¹⁵

¹⁵ The occupational medicine assistants also participate in some minor marketing activities such as health fairs.

The job descriptions for the occupational medicine assistant positions have "required" and "preferred" qualifications. The positions require high school graduation, current CPR certification and basic computer and typing skills. The preferred qualifications are certifications and education in the following areas: medicine toxicity II profile, hearing, breath alcohol, hair testing, phlebotomy or medical assistant, drug testing, pulmonary function, injections, bone density and EKG testing. If an applicant does not have these certifications, the Employer will provide the necessary training and/or testing to obtain the certifications.

The training requirements for these certifications are as follows: medicine toxicity II profile – 3 hour video; hearing – 3 day course; breath alcohol – 8 hour course; hair testing – 8 hour course; phlebotomy – 2 evenings a week for 3 months; drug testing – 8 hour course; pulmonary function – 3 day course; injections – 17 hour course. Schell has all of the preferred certifications, except pulmonary function, which she is in the process of obtaining. Orwig had been an ophthalmic technician; she does not yet have toxicology II, hearing, hair testing, pulmonary function or injection certifications.

D. Terms and Conditions of Employment of Occupational Medicine Assistants

The occupational medicine program is open Monday through Friday, from about 8:00 a.m. to about 4:30 p.m. When the program is closed, the program personnel take turns being on-call, and if necessary, report to the hospital lab to perform drug screening and breath alcohol testing. Some testing is also performed at employer facilities.

The occupational medicine assistants are paid hourly, and the wage rates appear to be comparable to wages paid to nonprofessional employees in the Petitioner's bargaining unit who are required to possess some specialized skills.¹⁶ The occupational medicine assistants receive

¹⁶ When Schell became a full-time occupational medicine assistant her wage rate increased from \$10.71 to \$13.25 per hour.

a paid vacation, have health care coverage, have a retirement benefit, have long and short term disability benefits, and have life insurance.¹⁷

E . Duties of Lab Secretary formerly in Occupational Medicine Program

As noted, from about September 2002 until about July 2005, Schell held the position of lab secretary in the occupational medicine program at its off-site location, and continued as a member of the Petitioner's nonprofessional bargaining unit. In this capacity, Schell performed minor clinical duties, as well as clerical functions. Schell took vital signs and performed vision screening, urinalysis dips, drug screens and breath alcohol testing.¹⁸

In describing her clerical duties as the lab secretary in the occupational medicine program, Schell differentiated between the nature of clerical functions performed by lab secretaries in the hospital lab and her work as the lab secretary in the occupational medicine program. According to Schell, the lab secretaries in the hospital lab spend the bulk of their time entering orders in the computer system,¹⁹ while she, when working as the lab secretary in the occupational medicine program, performed clerical functions more akin to those performed in a physician's office.

¹⁷ While most of these benefits are similar to those received by nonprofessional employees in the Petitioner's bargaining unit, they differ in the particulars. Specifically, as compared to the nonprofessional employees in the Petitioner's bargaining unit, the occupational medicine assistants receive more paid vacation, have a higher co-pay and higher premiums for health insurance, have a different retirement system, have different life insurance, and have long and short term disability benefits not available to unit employees.

¹⁸ It appears that Schell's duties were restricted by requirements of certification as well as by limitations, either actual or perceived, placed on the scope of her duties by virtue of the fact that the lab secretary position was a nonprofessional position covered by the Petitioner's contract with the Employer.

¹⁹ The lab secretaries in the hospital lab enter physicians' orders in the computer, such as orders for blood tests; they also generate labels for lab technicians to use and look up lab test results.

F. Duties and Qualifications of Other Unit Employees

As noted, the Petitioner represents the nonprofessional employees working in the hospital. Many of these nonprofessional employees perform duties similar to the occupational medicine assistants. Specifically, as set forth above, the occupational medicine assistants receive incoming telephone calls, schedule appointments, collect specimens, perform finger sticks, document patient information and vital signs, prepare records for physicians, prepare examining rooms, assist physicians with physicals, clean instruments, and count and order supplies. These are the same as duties performed by many other nonprofessional unit employees, such as the certified nurses aides, noncertified OR techs and clerk-secretaries.²⁰

By way of specific example, included within the Petitioner's nonprofessional unit are medical assistants working in the emergency room.²¹ These medical assistants perform secretarial functions in the emergency room, draw blood, cast splints, clean and dress wounds, transport patients, prepare patients, assist with minor surgical procedures such as stitches, perform urinary catheterizations and perform vision tests. The medical assistant position requires completion of a 10 month, full-time, medical assistant training program.

Other positions within the Petitioner's bargaining unit have also been modified to require increased certification. For example, in the negotiations for the current contract covering the nonprofessional employees, the parties agreed to increase wage rates for the OR techs and certain building maintenance employees because their jobs had become more complex and required more certifications.

²⁰ RNs, LPNs and physicians perform many of these duties as well.

²¹ During negotiations for the most recent collective-bargaining agreement, the parties agreed that the Employer could make certain changes in the operation of the emergency room, and as a result, this position was added to the bargaining unit subsequent to the execution of the current contract.

Also within the Petitioner's bargaining unit are employees who work off-site and work on an on-call basis. Thus, within the nonprofessional bargaining unit are five transcriptionists who work out of their homes and OR techs who may be assigned to an on-call status.

IV. ANALYSIS

A. Asserted Historical Exclusion of Occupational Medicine Assistants

The Employer first asserts that the petition must be dismissed because the Petitioner seeks to clarify the unit to include a classification which has historically been excluded from the bargaining unit.

Specifically, the Employer asserts that "the occupational medicine coordinator/assistant position has been in existence in one form or another since 1998," during which time the parties have negotiated two collective-bargaining agreements, but the Petitioner has never sought to include the position in the unit until the filing of the instant petition. Since there has never been a position called "occupational medicine coordinator/assistant," by this statement the Employer is apparently referring to a composite of three other positions: the LPN who performed the clinical functions from 1998 to the summer of 2002; the occupational medicine services coordinator position held by Diven from August 2002 until July 2005; and most recently the occupational medicine coordinator position held by Diven as well as the occupational medicine assistant positions sought by the instant petition.

The Employer is thus asserting that the occupational medicine assistants sought herein are the functional equivalent of the LPN, the occupational medicine services coordinator and finally the occupational medicine coordinator. Because the LPN and occupational medicine services coordinator were excluded from the Petitioner's bargaining unit, the Employer asserts that the petition raises a question concerning representation which cannot be resolved by a unit clarification petition.

The Board described the purpose of unit clarification proceedings in Union Electric Co.,

217 NLRB 666, 667 (1975):

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category—excluded or included—that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not express consent.

The record clearly establishes that the occupational medicine program has grown and changed since its inception in 1991. As part of these changes over the years, the occupational medicine program has relocated into its own space, has become a separate program, with its own dedicated staffing, and has greatly expanded the services offered. As the occupational medicine program has evolved, its staffing pattern has also changed from the original division of functions between a clinician (a lab technologist or an LPN) and a clerical employee (a lab secretary) to the present staffing by three clinicians (the occupational medicine coordinator and the two occupational medicine assistants). Not only has the overall staffing pattern changed, but also the duties performed by individual staff members have changed over the years.²²

It is further noted that the record does not establish that the Petitioner knew or had reason to know the specific functions Diven performed when she was awarded a new position of occupational medicine services coordinator in August 2002. In fact, since the position replaced the LPN in the occupational medicine program, which had been within the District 1199 bargaining unit, the Petitioner may reasonably have presumed the occupational medicine

²² The job description of the occupational medicine services coordinator position dated August 2002 bears little resemblance to the job descriptions for the occupational medicine coordinator and occupational medicine assistants first posted in July 2005. The Employer's creation of new job descriptions indicates a recognition that the job description dated 2002 no longer reflected the nature of the job as it had evolved over three years.

services position to be another technical position outside the Petitioner's nonprofessional unit. Thus, the Employer has not demonstrated that the Petitioner waived its right to assert through a unit clarification proceeding that occupational medicine assistants are within its nonprofessional bargaining unit.

The Employer's argument that the instant petition raises a question concerning representation inappropriate for resolution through a unit clarification petition would perhaps be more pertinent if the petition had sought the inclusion of the recently created occupational medicine coordinator position. In those circumstances, if the recently created occupational medicine coordinator position were found to be nonprofessional and nonsupervisory²³ and a successor position to the historically excluded occupational medicine services coordinator position, it might very well be concluded that regardless of the reason for the historical exclusion of the occupational medicine services coordinator position, the successor position could only be included in the existing nonprofessional unit by means of an appropriate self-determination election. Here, however, the Petitioner does not seek the inclusion of the recently created occupational medicine coordinator position.

Rather, the issue before me is the placement of the newly created occupational medicine assistant position, which is not a successor to the lab technologists or the LPN in the occupational medicine program, which were both technical positions included in the District 1199 bargaining unit. Nor can it be concluded that the newly created assistant position is a successor to the historically excluded occupational medicine services coordinator position held by Diven from 2002 until July 2005.

Applying Union Electric Co. to these facts, I find that rather than demonstrating that the occupational medicine assistant position is the functional equivalent of the historically excluded lab technologist, LPN or occupational medicine services coordinator positions, the record

²³ See fn. 14.

establishes that the Employer created a new position of occupational medicine assistant, and therefore that a unit clarification petition is appropriate. Accordingly, inasmuch as I conclude that the instant petition is timely filed, a determination on the merits of the dispute is appropriate.

B. Positions of the Parties

Both parties have analyzed this case as an accretion, but have applied different analytical frameworks. The Petitioner has analyzed this case under the analysis set forth in The Sun, 329 NLRB 854 (1999). In that case, the Board set forth a rebuttable presumption that new employees performing job functions similar to those performed by unit employees should be added to the existing unit. That presumption applies, however, in "unit clarification proceedings involving bargaining units defined by the work performed." *Id.* at 859.²⁴

On the other hand, the Employer has applied a traditional accretion analysis and argues that the disputed positions lack a community of interest with the existing unit, citing Great A & P Tea Co. (Family Savings Center), 140 NLRB 1011 (1963) (employer added center selling non-food items to existing grocery store; employees of center held an accretion to 155-grocery store unit); Kalamazoo Paper Box Corporation, 136 NLRB 134 (1962) (severance of truckdrivers from existing production and maintenance unit inappropriate under community of interest analysis); and Granite City Steel Company, 137 NLRB 209 (1962) (employees of powerhouse purchased by employer held accretion to existing unit of employees in blast furnace department). In arguing that there is no community of interest, the Employer relies on the disputed positions' historical exclusion discussed above, the off-site location, the restriction to daylight hours, the reduced amount of clerical duties as compared to the lab secretary in the occupational medicine program, the more technical nature of clinical duties as compared to the lab secretary in the

²⁴ The holding in that case was predicated on the fact that the bargaining unit was defined by the work performed rather than defined by job classification. The Board specifically limited its holding to situations where the bargaining unit is defined by the work performed. In the present case, however, the bargaining unit is not defined by the work performed. Accordingly, The Sun is not applicable to the present case.

occupational medicine program, the specialized training required, the different supervision from the existing unit, the absence of significant interaction with unit employees, and the difference in benefits.

For the reasons set forth below, I have concluded that neither the analysis urged by the Petitioner nor by the Employer is appropriate herein.

C. Legal Standard

As noted, it is well established that a unit clarification petition is appropriate for resolving ambiguities concerning the unit placement of individuals who come within a newly established classification. Union Electric Co., supra. If a new classification is performing the same basic functions as a unit classification historically had performed, "the new classification is properly viewed as remaining in the unit rather than being added to the unit by accretion." Premcor, Inc., 333 NLRB 1365, 1366 (2001). See also Developmental Disabilities Institute, 334 NLRB 1166 (2001).

In Premcor, Inc., supra, the employer operated an oil refinery, and had employed bargaining unit employees as "operators" who monitored and manipulated "elements" on control boards in the processing area. The employer established a control room in a separate facility located away from the processing area, which utilized more sophisticated control equipment. The employer eliminated the operator position, and created a new position called PCCs. The PCCs performed bargaining unit work, although they were required to have special training and certification and exercised greater discretion.

While the Union in Premcor argued that the PCCs were an accretion to the existing unit, the Board found the accretion analysis inappropriate. Rather, the Board held that "[o]nce it is established that a new classification is performing the same basic functions as a unit classification historically had performed, the new classification is properly viewed as remaining in the unit."

In Developmental Disabilities Institute, the employer provided educational services to autistic children and young adults, using a teacher and two assistant teachers in a small-class setting. To deal with children with severely disruptive behavior, the employer created a new position of therapy assistant/psychology. These therapy assistants provided one-on-one instruction away from the classroom. While the teachers and assistant teachers in Developmental Disabilities Institute were in the bargaining unit, therapy assistants working in other departments (vocational, adaptive physical education, and opti-health care) were nonunit positions.

In Developmental Disabilities Institute, the Board rejected an accretion analysis and found that since the therapy assistants/psychology performed the same functions that historically had been performed by unit employees, they were appropriately included in the unit.

In this case, the Petitioner has represented the nonprofessional employees for about forty years, and the parties have had successive collective-bargaining agreements. There is no question that the lab secretary for the occupational medicine program was covered under the contract, even as that position moved off-site, acquired more clinical duties, had restricted hours, had different supervision, and had little interaction with the rest of the unit. The issue therefore is not whether the newly created occupational medicine assistant positions should be accreted to the existing unit, but rather whether the newly created positions are part of the existing nonprofessional unit covered by the parties' contract.

D. Application of Legal Standard to Facts

As set forth above, the Petitioner has represented the nonprofessional employees for about forty years, and the parties have had successive collective-bargaining agreements. The term nonprofessional has been defined by the parties as follows:

The term, "nonprofessional employees," is intended to exclude those whose occupations require a course of study or an extensive technical training course or apprenticeship, such as laboratory technicians, registered or licensed practical nurses, or dietitians. [sic]

The record reveals that the contract has been applied to the nonprofessional employee in the occupational medicine program, starting with the lab secretary in the hospital's clinical lab who performed clerical functions for the program. As the occupational medicine program moved off-site in 2002, and as the lab secretary's position evolved from a clerical position to one involving more clinical functions, the lab secretary continued to be part of the Petitioner's existing nonprofessional bargaining unit and continued to be covered under the contract.

The record establishes that the occupational medicine assistants are nonprofessional employees as the parties have defined that term in their contract. The certifications which are preferred for the position do not require an extensive technical training course or apprenticeship or a similar course of study which would cause the position to be excluded from the nonprofessional classification as defined by the parties. In fact, the certifications which are preferred for the occupational medicine assistant position are similar to, but require less intensive training than the training required for the medical assistants in the emergency room, a newly created position covered under the Petitioner's contract.

The clinical functions currently performed by the occupational medicine assistants are similar to the functions previously performed by Schell when she held the position of lab secretary in the occupational medicine program. When Schell served as the lab secretary in the occupational medicine program, she took vital signs and performed vision screening, urinalysis dips, drug screens and breath alcohol testing. Schell continues to perform these functions as an occupational medicine assistant.

Further, the clerical functions performed by the occupational medicine assistants are also similar to the clerical functions previously performed by Schell when she held the position of lab secretary in the occupational medicine program.

Not only are the functions of the occupational medicine assistants similar to the functions performed by Schell when she served as a lab secretary in the program, but also the functions of the occupational medicine assistants are similar to the functions performed by other

nonprofessional employees in the Petitioner's bargaining unit. Thus, the occupational medicine assistants receive incoming telephone calls, schedule appointments, collect specimens, perform finger sticks, document patient information and vital signs, prepare records for physicians, prepare examining rooms, assist physicians with physicals, clean instruments, and count and order supplies. These clinical functions performed by the occupational medicine assistants are very similar to the clinical functions performed by certified nurses aides and also by the medical assistants in the emergency room. In addition, the clerical functions performed by the occupational medicine assistants are similar to the order entry functions performed by the lab secretaries in the clinical lab.

Based on the above and the record as a whole, I find that the occupational medicine assistants are nonprofessional employees, working at the same off-site location where the occupational medicine lab secretary worked, and performing functions similar to the functions performed by the occupational medicine lab secretary before that position was eliminated. Indeed, the former occupational medicine lab secretary Schell was awarded the full-time position of occupational medicine assistant II. Further, the occupational medicine assistants perform functions similar to the functions performed by other nonprofessional employees in the unit. Accordingly, the occupational medicine assistants perform work which had historically been performed by unit positions and remain in the Petitioner's bargaining unit under Premcor, Inc. and Developmental Disabilities Institute.²⁵

²⁵ In view of the parties' historical inclusion of the lab secretary position, with its attendant clinical duties, in the bargaining unit represented by the Petitioner, and in light of my conclusion that the occupational medicine assistant positions are clearly nonprofessional positions encompassing the duties of the eliminated lab secretary position, I find that the similarities between the newly created job descriptions for occupational medicine coordinator and occupational medicine assistants I and II do not warrant a different result.

V. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:²⁶

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

VI. ORDER

IT IS HEREBY ORDERED that the existing unit of nonprofessional employees of Fairmont General Hospital, Inc. represented by Retail, Wholesale and Department Store Union Council, Local 550, United Food and Commercial Workers International Union be, and it hereby is, clarified so as to include the positions of Occupational Medicine Assistant I and Occupational Medicine Assistant II.

²⁶ In its post-hearing brief, the Petitioner also requests that the Employer be ordered to negotiate with it regarding the appropriate wage rate for the occupational medicine assistant positions. In effect, the Petitioner seeks, in this proceeding, a remedy which would be available only after a determination that the Employer violated Section 8(a)(5) of the Act by setting terms and conditions of employment of new unit positions without bargaining with the Petitioner. Such a remedy is clearly beyond the scope of a unit clarification petition.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001.²⁷ This request must be received by the Board in Washington by 5 p.m., EST (EDT), on **January 4, 2006**. The request may **not** be filed by facsimile.

Dated: December 21, 2005

/s/Gerald Kobell

Gerald Kobell, Regional Director

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385-7533-2040

385-7533-2060

²⁷ A request for review may be filed electronically with the Board in Washington, D.C. The requirements and guidelines concerning such electronic filings may be found in the related attachment supplied with the Regional Office's initial correspondence and at the National Labor Relations Board's website, www.nlrb.gov, under "E-Gov."